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PROOF OF SIGNATURES BY MARK.—Proof of a signature by mark is held, in *Wienecke v. Arbin* (Md). 44 L. R. A. 142, to be insufficiently made nearly twenty-five years afterward by testimony of an attesting witness that he certainly saw the signature made or he would not have put his name there, when he is unable to recall the circumstances or the place of the alleged signing—especially when there is no proof that the maker of the instrument made or authorized its delivery, or that it was read or explained to the maker, who could not read.

With this case is a review of the decisions as to proof of signature by mark when attesting witnesses thereto are dead or cannot remember the transaction.

ILLEGAL ASSESSMENT—PAYMENT UNDER PROTEST.—Plaintiff being threatened with a levy of an execution against his real estate, issued upon an illegal assessment for municipal improvements, paid the amount under protest. There was at the time pending litigation, instituted by other parties similarly situated, for the purpose of enjoining such assessments, of which proceedings plaintiff had full notice, and to which he might easily have made himself a party. *Held*, that the payment, though under protest, was, under the circumstances, voluntary, and could not be recovered back. *Hoke v. City of Atlanta* (Ga.), 33 S. E. 412.

The soundness of this decision, on the ground upon which it is placed, viz., that the levy might easily have been enjoined, is doubtful. The fact that the courts are open to the tax-payer, to enjoin a threatened levy for an illegal tax, is no good reason why a payment made under such duress is not compulsory. Under such a rule, it would be difficult to imagine a compulsory payment made in response to a threatened levy, since the courts are always open for the protection of the citizen against official oppression. Certainly payment of an illegal claim in order to avoid arrest of one's person, is not rendered voluntary because he might have been immediately released by *habeas corpus*.

The decision may be sustained, however, on the ground that the principles applicable to duress of the person and of personal chattels do not, according to many authorities, apply to real estate, since if the levy be made on an illegal assessment, no title passes to the purchaser, and the real estate is not liable to disappear or perish, as in the case of chattels.

Whether or not there is sufficient duress to render the payment compulsory in such case, probably depends upon the question whether the sale would be absolutely void or merely avoidable by judicial proceedings. See *Rogers v. Greenbush*, 58 Me. 390 (4 Am. Rep. 292); *Forrest v. Mayor of New York*, 13 Abb. Pr. 350; *Stover v. Mitchell*, 45 Ill. 213; *Detroit v. Martin*, 34 Mich. 170 (22 Am. Rep. 512); note to *Mayor of Baltimore v. Lefferman* (Md.), 45 Am. Dec. 145, 160. Compare *Mayor of Richmond v. Judah*, 5 Leigh, 305.

WHEN SUIT CONSIDERED AS COMMENCED.—In *United States Blowpipe Co. v. Spencer* (W. Va.), 33 S. E. 342, it is held that the pendency of a suit in chancery dates from the issuing of the process, and not from the date of its service. In *Newman v. Chapman*, 2 Rand. 93, 102, it is said that while at law the writ is pending from the first moment of the day on which it bears *teste*, in chancery the rule "was relaxed and the suit was not regarded as pending until service of the subpoena." As said by the West Virginia court, "this ruling was based on the English practice, from the fact that never till bill filed did [the] writ issue; . . . but now